

Beena Sabu Vs. Sunilkumar and Others

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Court : Kerala

Decided On : Mar-23-2015

Judge : Honourable Mr.Justice T.R.Ramachandran Nair

Appellant : Beena Sabu

Respondent : Sunilkumar and Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE SMT. JUSTICE P.V.ASHA MONDAY, THE 23D DAY OF MARCH 2015 2ND CHAITHRA, 1937 MACA.No. 361 of 2011 () -----

AGAINST THE AWARD IN OPMV5132008 of M.A.C.T., KOZHIKODE DATED 22-06-2010

APPELLANT(S)/PETITIONER:

----- BEENA SABU, W/O.LATE SABU SAIMON, KANATU HOUSE, RAROTH VILLAGE, THAMARASSERY P.O. KOZHIKODE DISTRICT. BY ADV. SMT.BINDU GEORGE RESPONDENT(S)/RESPONDENTS:

----- 1. SUNILKUMAR, S/O.DAMODARAN, KAPPIDATH (HOUSE), MANASSERY P.O., MUKKOM KOZHIKODE, DISTRICT.

2. ABSUL SALAM, S/O.KAYAKUTTY, POOZHAMPURATH (HOUSE), KADDAD AMSOM, THAMARASSERY.

3. UNITED INDIA INSURANCE COMPANY LIMITED, KALLAI ROAD, CALICUT. R,R1 BY ADV. SRI.P.R.SREEJITH R,R1 BY ADV. SRI.M.PROMODH KUMAR R,R3 BY ADV. SRI.RAJAN P.KALIYATH THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON2303-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R. RAMACHANDRAN NAIR & P.V. ASHA, JJ.

----- M.A.C.A.No.361 of 2011 -----
----- Dated this the 23rd day of March, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the injured in a motor vehicle accident. She suffered serious injuries in the accident which occurred on 5.6.2007. Along with her husband she was travelling from Thamarassery to Mukkam in a motor bike bearing Reg. No.KL-11-R- 2375 and when it reached at Veterinary Hospital, Thamarassery, the offending vehicle, viz. a bus bearing Reg. No.KL-11-N-9888 hit against the motor bike. She was treated in the Medical College Hospital, Kozhikode and her husband died in the accident. The total compensation claimed was Rs.3 lakhs, out of which the Tribunal granted an amount of Rs.1,03,660/-.

2. The appellant sustained the following injuries: "Fracture D9 vertebra, fracture mandible, fracture ribes 1st and 2nd (Rt), fracture of superior pubic rami (Rt), abdominal injuries, MACA3612011 2 head injury, ophthalmic injury, dental injury, facial injury (dentoalveolar fracture), Maxilo facial injury, communitied 1/A fracture lower, spin fracture." She was issued with Ext.A2 wound certificate by the Al-shifa Hospital wherein she was taken. She was discharged on 16.6.2007 from that hospital and therefore the inpatient treatment is for 11 days. She had suffered serious injuries to the mandible and going by Ext.A7 series treatment certificates dated 12.6.2007 and 17.10.2009 she was advised to take rest for three months. It is also seen that she was treated in MIMS Hospital for fracture body of mandibles which is supported by Ext.A8. Exts.A9 and A10 series are also produced to support the case of treatment as well as payment of bill for Rs.3,310/-.

3. The permanent disability assessed by the Medical Board is 15%. Even though the appellant contended before the Tribunal that 9 teeth have been removed, it was not accepted by the Tribunal, as there was no evidence to prove extraction of 9 teeth. But the Tribunal adopted the disability assessed by the Medical Board.

4. As far as monthly income is concerned, she was drawing a MACA3612011 3 salary of Rs.10,443/- per month as a Teacher in St. Jones High School, Nellipoyil. But while calculating compensation for disability, the same is reckoned only for the period after retirement, by taking a notional income as Rs.2,000/-, which according to us, is not the correct method. The Tribunal has granted compensation in the following manner: Head of claim Amount awarded by the Tribunal (Rs) Transport to hospital 750 Extra nourishment 1000 Loss of earning 31500 Treatment expenses 3310 Bystanders expenses 1100 Pain and suffering 12000 Permanent disability 54000 103660

5. A person who has suffered personal injuries and disability, will have to be adequately compensated by adopting the multiplier method. It is true that she has not suffered any loss of earning power for which she may not be able to claim anything, but the actual disability suffered will have to be compensated. If that be so, she will be entitled to get compensation based on the monthly salary. The multiplier to be adopted is 15. Even though the learned counsel for the insurance MACA3612011 4 company objected to the same by pointing out that there is no loss of earning power, in the light of the judgments of the Apex Court in Kavita v, Deepak and others (2012 ACJ2161, Suresh v. New India Assurance Co. Ltd. (2012 (4) KLT SN154- SC), Manickam v. Metropolitan Transport Corporation Ltd. (2013 (3) KLT248- SC), Sanjay Verma v. Haryana Roadways (2014 ACJ692; and Shaikh Farooq Mohammad Gaouse v. Thane Municipal Transport Undertaking (2014 ACJ203, compensation will have to be granted for permanent disability as well as for loss of earning power, where both components are evident. In Suresh's case {(2012) 12 SCC274 it was held that "even if compensation is granted for permanent disability, compensation can be granted for loss of earning capacity and loss of future earnings." We are granting compensation only on one head, viz. for permanent disability which also, going by the decision in Sarla Verma v. Delhi Transport Corporation (2010 (2) KLT802- SC), will have to be calculated by adopting the multiplier method. But coupled with the amount granted for permanent disability, MACA3612011 5 compensation will

have to be granted for pain and suffering as well as for loss of amenities and enjoyment in life also. Herein, for pain and suffering the Tribunal has granted only a sum of Rs.12,000/-. Serious injuries have been caused to the appellant and she was under continuous treatment for more than six months in three hospitals. Therefore, we grant a sum of Rs.35,000/- for pain and suffering and in the light of the disability suffered, we are granting a sum of Rs.25,000/- towards loss of amenities and enjoyment in life. Compensation for permanent disability will come to Rs.2,81,880/- (10440 x 12 x 15 x 15/100). We grant an amount of Rs.3,000/- as bystander's expenses reckoning Rs.250/- per day. Accordingly, the total compensation will be recomputed as follows:

| Head of claim | Amount awarded by the court (Rs) | Amount Modified (Rs) |
|---------------------------------------|----------------------------------|----------------------|
| Transport to hospital | 750 | 3000 |
| Extra nourishment | 1000 | 3000 |
| Loss of earning | 31500 | 31500 |
| Treatment expenses | 3310 | 3310 |
| Bystanders expenses | 1100 | 3000 |
| MACA3612011 | 6 | |
| Head of claim | Amount awarded by the court (Rs) | Amount Modified (Rs) |
| Pain and suffering | 12000 | 35000 |
| Loss of amenities & enjoyment in life | 25000 | |
| Permanent disability | 54000 | 281880 |
| Total | 103660 | 385690 |

(Rupees Three lakhs eighty-five thousand six hundred and ninety only) The enhanced amount of compensation will carry interest at 9% per annum from the date of petition. The insurance company is directed to deposit the entire amount of compensation, less the amount already deposited before the Tribunal, within a period of three months. The additional court fee for the entire amount of compensation will be paid by the appellant which will be realised from the amount deposited by the insurance company, before disbursing it to the appellant. The appeal is allowed as above. The parties will suffer their costs in the appeal. (T.R. RAMACHANDRAN NAIR, JUDGE.) (P.V. ASHA, JUDGE.) kav/

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